IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 178 of 1984

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAGAR SIDA JESA - Appellant(s)
Versus
THAKKAR NAROTTAM RAMJI KANABAR - Defendant(s)

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Appearance :
MR SURESH M SHAH for Appellant(s) : 1,
Defendant(s) : 1 SERVED,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 11/06/2007

ORAL JUDGMENT

This Appeal preferred under Section 100 CPC by the defendant in Regular Civil Suit No.23/1981 arises from the judgment and order dated 31st March, 1984

passed by the learned Extra Assistant Judge, Jamnagar in Regular Civil Appeal No.193/1982.

The Appeal is admitted on following substantial questions of law :

1. Whether, in the facts and circumstances of the case, the lower appellate Court was right in discarding Exhibit 54 inter alia on the ground that it was not referred to in the written statement and;

2. Whether the lower Courts were right in awarding interest under the Sale of Goods Act.

The respondent-plaintiff instituted the above referred Regular Civil Suit No.23/1981 in the Court of Civil Judge (J.D.), Bhanvad for recovery of a sum of Rs.9,000=00. According to the plaintiff, he was dealing in groundnuts. He had made an advance payment of a sum of Rs.35,000=00 to the defendant for supply of groundnuts. Against the said advance payment, the defendant supplied groundnuts worth Rs.27,420=00.

Therefore, the suit for recovery of the remainder of the amount and the interest. The suit was contested by the defendant by written statement Exh.8. He denied the allegations made in the plaint and his liability to pay the remaining amount to the plaintiff. It appears that the defendant produced receipt Exh.54 to establish that he had supplied groundnuts for the remaining amount and that the kachcha receipt was issued for the same by the son of the plaintiff. The learned Civil Judge believed the alleged receipt given by the son of the plaintiff. The learned Civil Judge, therefore, held that the defendant had supplied the groundnuts worth Rs.35,000=00 and more and that nothing was due from him to the plaintiff. He accordingly dismissed the suit.

Feeling aggrieved, the plaintiff preferred the above referred Regular Civil Appeal No.193/1982 in the Court of District Judge, Jamnagar. The Appeal was heard and decided by the learned Assistant Judge. The learned Assistant Judge did not believe the receipt Exh.54 allegedly given by the son of the plaintiff.

According to the learned Assistant Judge the receipt Exh.54 was not a reliable document in as much as it was not referred to in the pleadings. The learned Assistant Judge, therefore, by the impugned judgment and order dated 31st March, 1984 allowed the Appeal and passed decree in the sum of Rs.8,924=00 with interest at the rate of 6% from the date of the suit till the payment in full. Therefore, the present Second Appeal.

Mr.Shah has assailed the impugned judgment and order. He has submitted that the learned Assistant Judge has erred in not believing and in not relying upon the receipt Exh.54. He has submitted that the reasons stated for not relying upon the receipt Exh.54 are not cogent. The learned Judge ought to have believed receipt Exh.54 and the evidence of the defendant. He has further submitted that the learned Assistant Judge has erred in awarding interest over the amount claimed under the Sale of Goods Act and has also erred in awarding cost of notice. He has submitted that the plaintiff, in his evidence, did not deny the signature of his son Chandrakant on the

receipt Exh.54 nor did he examine the said Chandrakant either to admit or to deny the said signature. In absence of any other evidence, the receipt Exh.54 ought to have been believed and the suit ought to have been dismissed in favour of the defendant.

I am unable to agree with Mr.Shah. In my opinion, the learned Assistant Judge has given cogent reasons for not believing the receipt Exh.54 and for not relying upon it. It is evident that the plaintiff, in his evidence, did not admit the signature of his son Chandrakant on the receipt Exh.54. The onus to prove the signature, therefore, was upon the defendant, which he failed to discharge. In absence of any other reliable evidence, the learned Assistant Judge has rightly decreed the suit in favour of the plaintiff. The award of interest at the rate of 6% also does not warrant interference in the present Second Appeal. No question of law arises in this Appeal.

For the aforesaid reasons the Appeal is

dismissed. There shall be no order as to cost.

(Ms. R.M.Doshit, J.)

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